

In light of the fact that the SWFs are exposed to similar if not greater costs and performance risks than the Wind Catcher Project, and are expected to provide significantly lower net benefits to customers, it is important that the performance and cost guarantees applicable to the SWFs be equivalent to or better than guarantees offered in Oklahoma by AEP (PSO) for the Wind Catcher Project. This is particularly true given the nominal average annual benefits of about \$4 million under SWEPCO's low gas-price scenarios.⁴⁸⁴

CARD also indicates that the Commission approved a similar net benefits guarantee in Docket No. 46936.⁴⁸⁵

Additionally, CARD requests that SWEPCO be required to provide customers with 100% of the benefits of off-system sales and renewable energy credits margins attributable to the SWFs, and a MFN provision to ensure that the guarantees provided to customers will reflect any other better guarantees that were adopted for the Project by regulators in other jurisdictions.⁴⁸⁶

SWEPCO argues that CARD has inappropriately lifted a single provision from a separate and unrelated case and recommended that it be applied in this case. SWEPCO asserts that, when taken as a whole, there is value in the provisions included within the Oklahoma and Arkansas SWF-related settlements discussed above, but not the Oklahoma *Wind Catcher* settlement regarding the acquisition of completely different assets.⁴⁸⁷

The ALJs conclude that a net benefits guarantee would provide additional customer protection against the financial risk of the Project. Mr. Norwood persuasively recommended that a net benefits guarantee, like the one agreed to in the Oklahoma *Wind Catcher* settlement, would benefit the Project. As his side-by-side review indicated, while the potential benefits of the Project are lower than those projected in the Oklahoma *Wind Catcher* settlement, it is subject to similar if

⁴⁸⁴ CARD Ex. 1 (Norwood Dir.) at 21-22.

⁴⁸⁵ See Docket No. 46936, Order at 3 (FoF Nos. 79-88).

⁴⁸⁶ CARD Ex. 1 (Norwood Dir.) at 24.

⁴⁸⁷ SWEPCO did not specifically reply to CARD's recommendation in its reply brief as it did for OPUC, Staff, and Golden Spread; however, SWEPCO's reply to Staff referred to Mr. Norwood's recommendation for a net benefit guarantee and is therefore addressed in this PFD. SWEPCO Reply Brief at 61-70.

not greater costs and performance risks. Accordingly, the ALJs find that CARD's recommendation that SWEPCO provide a net benefits guarantee, 100% benefit of off-systems sales and renewable energy credits margins, and an MFN provision are reasonable and would further ensure that SWEPCO's Project results in a probable lowering of customer costs, if the Commission concludes that it should approve the Project.

3. Staff

Staff recommends that the Commission require SWEPCO to provide an improved minimum production guarantee as well as a net benefits guarantee, and insists that any calculation of net benefits should include the cost of building a gen-tie.⁴⁸⁸

SWEPCO asserts that Staff's request for a net benefits guarantee is unclear because, although Staff refers to the testimony of OPUC witness Nalepa and CARD witness Norwood for this proposition, it does not clearly indicate which proposal it ultimately recommends. SWEPCO disagrees with Staff's recommendation to include gen-tie costs in a calculation for net benefits, if such a guarantee is adopted. SWEPCO argues that recommendation is premature because SWEPCO has not requested approval to build a gen-tie and does not, at this time, anticipate that such a gen-tie will be needed.⁴⁸⁹

The ALJs did not consider Staff's recommendation for an improved minimum production guarantee or a net benefits guarantee because no specifics were provided for the ALJs' review and analysis. However, the ALJs previously concluded that a potential \$480 million gen-tie should be included in the Project's economic evaluation and that, due to the Project's economic uncertainty, CARD's proposed net benefits guarantee would be reasonable to further provide customer

⁴⁸⁸ Staff also recommends the Commission not approve SWEPCO's request for pre-approval to recover the DTA in rate base. This matter is addressed in Sections VI and X of the PFD.

⁴⁸⁹ As previously noted, SWEPCO has agreed to seek pre-approval from the Commission prior to constructing a gen-tie related to this Project. Furthermore, SWEPCO asserts that it would only seek to build such a gen-tie if the customer benefit of the line exceeded its costs. SWEPCO Ex. 14 (Brice Reb.) at 22-23.

benefits. Consistent with those conclusions, the ALJs agree that, if the Commission approves SWEPCO's Application and requires a net benefits guarantee, the cost of a \$480 million gen-tie should be included in the net benefits calculation.

4. Golden Spread

Golden Spread argues the Project would have unjust effects on SPP's transmission ratepayers in Texas because it would require them to subsidize the cost of the Project without receiving the Project's benefits. For this reason, Golden Spread recommends the Commission require SWEPCO to expeditiously acquire firm transmission and to accept the direct assignment of upgrade costs associated with the Project. Golden Spread also recommends that SWEPCO hold the other SPP transmission ratepayers in Texas harmless from any potential increases in transmission costs and congestion that might result from the Project. To support this request, Golden Spread points to the Commission's approval of a similar hold-harmless provision in Docket No. 47576.⁴⁹⁰ Additionally, Golden Spread recommends that if SWEPCO decides to construct a gen-tie, that it must provide the Commission with a comparative analysis of the cost and benefit of transmission alternatives (including the impacts of the SPP ITP process, NRIS, and firm transmission).⁴⁹¹

Golden Spread relies on the testimony of various SWEPCO witnesses to support its assertions that: (1) SWEPCO provided cost estimates for only two transmission solutions (SPP ITP upgrades or building a dedicated gen-tie), thereby ignoring other transmission solutions (specifically firm transmission); (2) the addition of wind generation facilities competing for limited transmission capability can increase congestion; (3) SPP transmission updates can reduce

⁴⁹⁰ See *Application of the City of Lubbock through Lubbock Power and Light for Authority to Connect a Portion of its System with the Electric Reliability Council of Texas*, Docket No. 47576, Order at Ordering Paragraph No. 7 (Mar. 15, 2018).

⁴⁹¹ Tr. at 503 (Pfeifenberger Dir.); Tr. at 810 (Ross Reb.); Golden Spread Initial Brief at 17-19. If SWEPCO decides a gen-tie is needed, it has agreed to seek approval from the Commission prior to construction.

congestion; and (4) the cost of transmission updates funded through the SPP ITP process is allocated among SPP customers (either regionally or by zone) based on SPP's tariff.⁴⁹²

SWEPCO contests Golden Spread's arguments and asserts Golden Spread's recommendations are inappropriate because they amount to a request that the Commission exclude Golden Spread from costs allocated to it pursuant to SPP's FERC-approved Open Access Transportation Tariff (OATT). Nevertheless, SWEPCO witness Richard Ross testified that SPP assigns transmission upgrade costs to its members fairly and appropriately based on applicable benefits under its OATT. According to Mr. Ross, any costs that should be directly assigned to SWEPCO under SPP's OATT for the Project, such as any firm transmission costs pursuant to the 20% wind rule,⁴⁹³ will in fact be directly assigned to SWEPCO while system upgrades that also benefit others would be allocated regionally among SPP's transmission ratepayers.⁴⁹⁴

Moreover, SWEPCO argues that it has already requested firm transmission but has not decided whether to acquire it because SWEPCO does not yet have the necessary information (an SPP study is currently underway) to determine whether the acquisition of firm transmission service will provide benefits to customers beyond the benefits to be provided by the Project, which SWEPCO asserts do not depend on such an acquisition.

Golden Spread addressed this argument in post-hearing briefs; it did not present a witness. The ALJs conclude the evidence does not show the Project would negatively affect SPP's transmission ratepayers in Texas, as discussed in further detail below.

⁴⁹² Tr. at 772-73 (Ali); SWEPCO Ex. 9 (Pfeiefenberger) at 9-10; Tr. at 318-19 (Sheilendranath).

⁴⁹³ Mr. Ross testified that the 20% wind rule provides that when a company's wind resources exceed 20% of its total resources, any transmission grid upgrade costs attributable to the company adding new wind resources above the 20% level are directly assigned to the company. The funding of the upgrade costs, if any, that are not subject to this limitation will be determined in accordance with the cost allocation provisions of the SPP OATT. SWEPCO Ex. 21 (Ross) at 7.

⁴⁹⁴ SWEPCO Ex. 21 (Ross) at 2.

D. ALJs' Analysis

The ALJs conclude that SWEPCO failed to show that the Project, with or without its proposed cost-saving guarantees, would result in the probable lowering of costs to consumers. Accordingly, the ALJs recommend the Commission deny SWEPCO's Application.

The ALJs previously concluded that SWEPCO's Base Case natural gas fundamentals forecast is inflated and that EIA's Low Case forecast provides a more accurate prediction of actual future costs. In fact, EIA's Low Case presents a cost forecast that is lower than SWEPCO's Low Gas fundamentals forecast. Furthermore, the ALJs concluded that, among other things, SWEPCO's proposed carbon tax should not be included in the Project's economic evaluation, but that \$480 million should be included to account for potential gen-tie construction costs. As a result of these conclusions, the amount of consumer benefits alleged by SWEPCO is greatly diminished, if not completely negated. After weighing SWEPCO's proposed cost-saving guarantees against the Project's economic uncertainty and overstated customer benefit projections, the ALJs conclude the evidence precludes a finding that SWEPCO's proposed guarantees provide adequate economic safeguards for its customers.

The ALJs conclude that, consistent with the Commission's decision in *Wind Catcher*, the additional guarantees proposed by Staff and certain Intervenor are insufficient to protect SWEPCO's customers because they do not provide enough certainty of a probable lowering of costs.⁴⁹⁵ The ALJs found many of the proposed additional guarantees reasonable and agree that adoption of those guarantees would further protect SWEPCO's customers from the potential risks of the Project. However, the evidence is unclear as to whether those additional guarantees would provide adequate safeguards for SWEPCO's customers in light of the Project's economic uncertainty and overestimated projected benefits. Furthermore, although SWEPCO bears the burden of proof in this case, it declined to expand or modify its proposed guarantees to include or become consistent with any of the enhanced guarantees proposed by Staff, OPUC, and CARD.

⁴⁹⁵ *Wind Catcher*, Order at 8.

Accordingly, the evidence precludes a finding that the adoption of additional guarantees proposed by Staff and certain Intervenors for the Project, either individually or collectively, would lead to a probable lowering of costs.

Furthermore, no evidence was presented that shows the Project would negatively affect SPP's transmission ratepayers in Texas, which is an issue that must be considered in accordance with PURA § 37.056(c)(3). Accordingly, if the Application is approved, the ALJs recommend the Commission reject Golden Spread's proposed conditions.

Golden Spread's recommendations stem from a concern regarding the potential allocation of future transmission upgrade costs associated with the SWFs that are funded through the SPP ITP process. SWEPCO correctly notes that any such costs would be allocated pursuant to SPP's FERC-approved OATT. Therefore, as a threshold matter, the ALJs conclude that Golden Spread's cost allocation concerns and request for a hold-harmless provision should not be addressed in this proceeding. Additionally, the ALJs give little weight to Golden Spread's reliance on the Commission's decision in Docket No. 47467 because it approved an unopposed settlement agreement, and, therefore, did not set precedent for approval of such hold-harmless provisions.⁴⁹⁶

VIII. REGULATORY APPROVALS IN OTHER JURISDICTIONS (P.O. ISSUE NOS. 7, 8, 9, 10)

SWEPCO's and PSO's filings in other jurisdictions are discussed in the Introduction to this PFD. In the event that either the APSC *or* the LPSC do not approve acquisition of the SWFs, SWEPCO asks that the Commission: (1) approve SWEPCO's acquisition of its originally proposed jurisdictional share of the Project for the benefit of Texas customers; or (2) approve SWEPCO's acquisition of the entire 810 MW (SWEPCO's share) of the Project with the costs and benefits of that acquisition allocated to the two approving states proportionately (the "flex-up" situation).

⁴⁹⁶ Docket No. 47576, Order at 1, FoF No. 71.

SWEPCO disagrees with Staff's allegation that SWEPCO "has not shown that this aspect of the application preserves the purported economic benefits of the [SWFs]." Instead, according to SWEPCO, in the second situation described above (the flex-up situation), SWEPCO will acquire the entire 810 MW (SWEPCO's share) of the Project. All of the customer benefit calculations presented by SWEPCO are total SWEPCO calculations. Therefore, in the flex-up situation, the customer benefits of SWEPCO's acquisition of 810 MW of the SWFs are the same, the only difference being that Texas customers' share of those benefits would be increased because Texas customers will have flexed-up to take a portion of the non-approving state's share of that 810 MW.

In the first situation described above, if either the APSC or LPSC does not approve the acquisition, SWEPCO will simply acquire the originally proposed jurisdictional share of the SWFs for the benefit of Texas customers and, in total, SWEPCO will acquire an amount less than the originally proposed 810 MW. In this situation, according to SWEPCO, it will acquire only the most economical combination of the SWFs to match its regulatory approvals, and customer benefits will be the same as studied or higher.

The now-approved APSC settlement also includes a flex up provision. Because the APSC has approved the unanimous settlement filed in that jurisdiction, SWEPCO and PSO have sufficient regulatory approval to proceed with acquiring *a portion* of the SWFs.⁴⁹⁷ According to the Arkansas and Louisiana settlement agreements, SWEPCO and PSO can acquire the entire 1,485 MW portfolio of SWFs once SWEPCO receives approval from either Louisiana or Texas (*i.e.*, both are not necessary).⁴⁹⁸ This is because the APSC settlement flex-up mechanism allows SWEPCO to decide whether to proceed with the entire 1,485 MW acquisition and increase the allocation of the SWFs to the participating jurisdictions—so long as at least two of the three SWEPCO jurisdictions (APSC, LPSC, and this Commission) approve the Project.⁴⁹⁹ The

⁴⁹⁷ SWEPCO Ex. 14 (Brice Reb.) at 3.

⁴⁹⁸ SWEPCO Ex. 14A (Brice Reb., Workpapers) at 9, which is the Attachment 1 set out in the text above.

⁴⁹⁹ *Id.*

following is Attachment 1 from the APSC settlement agreement, which shows the SWFs' capacity that can be acquired under different scenarios.⁵⁰⁰

Attachment 1

Acquisition Scenarios for SWEPCO That Include Arkansas

	Scenario A - Base Case All states and FERC approve	Scenario B - PSO, Ark, Texas and FERC, No La	Scenario C - PSO, Ark, La and FERC, No Texas	Scenario D - PSO, Arkansas and FERC, No Texas or La	Flex Up E - PSO, Ark, Texas and FERC, No La	Flex Up F - PSO, Ark, La and FERC, No Texas
Total SWEPCO MW	810	583	458	171	810	810
Total AR MW (Retail Only)*	155	155	155	155	245	268
Total SWEPCO Cost	\$1,088,846,127	\$678,099,509	\$614,517,782	\$220,722,488	\$1,088,846,127	\$1,088,846,127
Total SWEPCO MW @ 11¢/kWh	13,523,352	6,568,905	7,817,832	2,859,143	13,523,352	13,523,352

* Estimated

As shown in the last column, if the APSC and the LPSC approve their settlements, SWEPCO can acquire the entire 810 MW that it seeks, even if this Commission denies the Application. In any event, because the ALJs are recommending denial of the Application, an additional flex-up share for Texas as requested by SWEPCO in its Application likewise should be rejected as not in the public interest.

IX. OTHER CCN ISSUES (P.O. ISSUE NOS. 1, 2, 3, 4, 11, 12)

Only SWEPCO and OPUC provided substantive comments to this section in their post-hearing briefs. OPUC contends that SWEPCO's CCN application is not necessary under PURA § 37.056 because SWEPCO is currently providing adequate service and has no need for additional generation capacity. OPUC notes that SWEPCO is retiring the seasonally active, 600 MW Dolet Hills coal plant two decades before its scheduled retirement, and SWEPCO has stated that the generation capacity value provided by the Project will not begin to materialize until 2037, halfway through the 30-year life of the Project.

⁵⁰⁰ *Id.*

As addressed above, the ALJs agree that SWEPCO does not need additional capacity at this time. The more cogent issue is whether SWEPCO has shown probable net benefits to customers if the CCN amendment were granted. The CCN approval standards are addressed in more detail in Section V above.

SWEPCO's additional comments on the specific Preliminary Order issues addressed in this section are set out below. No party challenged those comments and the ALJs find them to be accurate statements of fact.

Preliminary Order Issue No. 1 – Notice

SWEPCO states that it provided notice of its application to all the parties in *Wind Catcher* and Docket No. 46449,⁵⁰¹ to each of its 184,000 affected customers individually, and by publication in newspapers of general circulation in its Texas service areas once each week for two consecutive weeks. SWEPCO's Application supplied a form for its notice.⁵⁰² In SOAH Order No. 4, SWEPCO's proposed form and methods of notice were found sufficient.⁵⁰³ No party challenged this finding.

Preliminary Order Issue No. 2 – PURA Factors

See PFD Sections V, VI, and VII.

Preliminary Order Issue No. 3 – Other Facilities

SWEPCO states that all other facilities necessary to ensure power from the wind facilities can be used to serve Texas customers in a cost-effective manner are identified in its Application.

⁵⁰¹ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing (Mar. 19, 2018).

⁵⁰² SWEPCO Ex. 13.

⁵⁰³ SOAH Order No. 4, Finding Application and Notice Sufficient at 1 (Aug. 1, 2019).

No party challenged this statement with regard to Preliminary Order Issue No. 3, but an issue regarding whether a gen-tie would be needed is addressed above.

Preliminary Order Issue No. 4 –Effect on Reliability

SWEPCO states that acquisition of the SWFs is not sought to address a current capacity or reliability need, and the SWFs will not diminish the reliability provided by SWEPCO's existing resources or transmission system. No party challenged this statement.

Preliminary Order Issue No. 11 – Effect on Customer Choice

Pursuant to PURA §§ 39.501(b) and 39.502(b) and 16 TAC § 25.422(e), SWEPCO is not currently in the process of implementing customer choice in its Texas service territory, and there is presently no indication that SWEPCO will soon be undertaking such an implementation. Accordingly, the SWFs will have no effect on the implementation of customer choice in SWEPCO's service territory or in the creation of stranded costs. No party challenged this position.

Preliminary Order Issue No. 12 – Whether the Commission Should Grant a CCN for Generation Proposed for Economic Reasons or Require the Utility to Acquire Additional Generation Through a Competitive Affiliate

There is no dispute that the Commission could grant a generation CCN solely for economic reasons if the Commission determined that customers would receive net benefits from the acquisition consistent with the factors set forth in PURA § 37.056.⁵⁰⁴ No party suggested that SWEPCO should have acquired, or needed to acquire, additional generation through a competitive affiliate. As noted, no party suggested that SWEPCO needs additional generation capacity.

⁵⁰⁴ *Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy LLC, and Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Order at 4 (May 25, 2018) ("After considering the proposed factors set forth in PURA § 37.056(c), the Commission concludes that SPS has shown a probable lowering of costs to customers in the area, and SPS's application should be granted.").

X. RATE ISSUES (P.O. ISSUE NOS. 21, 22, 25, 26, 27, 28, 29, 30, 31)

SWEPCO addressed a number of potential rate recovery issues in its application. These issues involved the Generation Investment Recovery Rider, PTCs, the DTA, jurisdictional allocation, and RECs. Except for the DTA issue, addressed in Section VI.C.5 above, SWEPCO did not request Commission approval of these proposals in this docket and, therefore, the ALJs do not recommend that the Commission take any action in this docket on those potential ratemaking treatments.

With regard to the DTA, SWEPCO requested that the Commission approve in this docket inclusion of any unrealized PTCs in a DTA that will be included in rate base in subsequent rate proceedings. SWEPCO argued that its customers will receive the benefit of PTCs earned in any given year. In the event the Company cannot fully utilize PTCs in a given year, a DTA will be established on SWEPCO's balance sheet. SWEPCO argues that because its customers would be receiving the benefits of the PTCs, it is reasonable to also include the DTA associated with the PTCs not used by SWEPCO in its base rate revenue requirement.

As addressed in Section VI.C.5. above, CARD, TIEC, and Staff oppose SWEPCO's proposed DTA rate recovery request, and argue that all issues pertaining to proper or appropriate rate treatment (not just the DTA) should be addressed in the subsequent ratemaking proceeding that SWEPCO would initiate if its Application were approved. As noted by Staff, SWEPCO's DTA request is not ripe for consideration in a CCN proceeding, particularly considering the uncertainties regarding the balance of the DTA, the length of time it will remain in rate base, any future changes to federal tax law or PURA, and the method by which SWEPCO will credit the PTC benefits to customers.

Even if the Commission approves the Project, the ALJs would recommend, for the reasons stated by CARD, TIEC, and Staff, that the Commission not approve any ratemaking treatments in this CCN docket.

XI. SALE, TRANSFER, MERGER ISSUES (P.O. ISSUE NOS. 13, 14, 15, 16, 17, 18)

The preliminary order issues include whether PURA § 14.101(a) applies to this proceeding; whether the reporting requirements of the provision have been met; and whether the Project is in the public interest. Section 14.101 requires Commission review of any transaction in which a utility intends to “sell, acquire, or lease a plant as an operating unit or system in this state for a total consideration of more than \$10 million.”⁵⁰⁵ No party disputes that the SWFs are wholly and physically located in Oklahoma. Staff, ETEC-NTEC, and GSEC argue that § 14.101(a) applies to this transaction despite the SWFs being physically located in Oklahoma. OPUC does not take a specific position on the meaning of “in this state” in § 14.101, but argues that if the Commission determines that § 14.101 does apply, it should conclude that SWEPCO has not shown that the public interest would be served by acquiring the SWFs and, therefore, the application should be rejected.

ETEC-NTEC rely primarily on preliminary orders issued in two dockets initiated by applications to acquire facilities located outside of Texas: one by Entergy Texas, Inc. (ETI), and the other by SPS.⁵⁰⁶ In this PFD, these two cases are referred to as *ETI Union Station* and *SPS XEST*. ETEC-NTEC do not cite to a particular passage in the *ETI Union Station* preliminary order concluding that the Commission has authority under § 14.101 to determine the public interest in that particular case, but the preliminary order notes that ETI requested a § 14.101 determination in its application. The preliminary order in *SPS XEST*, however, includes a specific preliminary ruling regarding § 14.101:

The Commission concludes that the reference in PURA § 14.101 to an “operating unit or system in this state” can include the SPS assets at issue in this application [located in Kansas and Oklahoma], because the assets are part of a system that is

⁵⁰⁵ PURA § 14.101(a)(1).

⁵⁰⁶ *Application of Entergy Texas, Inc. to Amend its Certificate of Convenience and Necessity and for Public Interest Determination for Purchase of Unit 1, Union Power Station in Union County, Arkansas*, Docket No. 43958, Preliminary Order (Mar. 10, 2015) (*ETI Docket No. 43958*) and *Application of Southwestern Public Service Company for Approval of Transaction with Xcel Energy Southwest Transmission Company, LLC and Related Approvals*, Docket No. 45291, Preliminary Order (Mar. 25, 2016) (*SPS Docket No. 45291*). See also ETEC-NTEC Ex. 1A (Daniel Dir.) at 8.

used to serve customers located in Texas, as well as part of the integrated system of the Southwest Power Pool.⁵⁰⁷

Golden Spread raises similar arguments to ETEC-NTEC by citing Commission dockets in which the applicant has requested a public interest finding under § 14.101, including *ETI Union Station* and another SPS case, referred to as the *SPS Hale and Sagamore* case.⁵⁰⁸ Golden Spread goes further by insisting that the Commission must consider all eight factors applicable under PURA §§ 14.101(b) and 37.056(c), including “whether the transaction will result in the transfer of jobs of citizens of this state to workers domiciled outside this state.”⁵⁰⁹ If these eight factors are not all considered, Golden Spread suggests, the Commission’s analysis would result in “a cursory and incomplete review” that risks being arbitrary and capricious.⁵¹⁰ Golden Spread also argues that exempting out-of-state projects from § 14.101 review would create an incentive “wholly contrary to the statute as it would encourage regulated utilities to site projects outside of Texas to sidestep the regulation in PURA § 14.101.”⁵¹¹ Golden Spread raises concerns that not applying § 14.101 would preclude the Commission from considering the potential that the SWFs would have an adverse effect on the service that other Texas utilities can provide customers. Golden Spread argues:

The state border has no bearing on the potential that the [Project] could result in the decline of service for Texas customers, including customers of Golden Spread and other SPP transmission ratepayers in Texas. Siting in Oklahoma does not exclude the potential for AEP’s wind projects to have adverse effects on service in Texas,

⁵⁰⁷ *SPS Docket No. 45291*, Preliminary Order at 3.

⁵⁰⁸ *ETI Docket No. 43958 and Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy LLC, and Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Order (May 25, 2018) (*SPS Hale and Sagamore*) citing SPS’s Application for Approval of a Certificate of Convenience and Necessity and Related Relief (Mar. 21, 2017).

⁵⁰⁹ PURA § 14.101(b)(2)(B).

⁵¹⁰ Golden Spread Reply Brief at 2-3.

⁵¹¹ GSEC Reply Brief at 4-5, citing *Entergy Gulf States, Inc. v. Summers*, 282 S.W. 3d 433, 446 (Tex. 2009) (Hecht, J., concurring). (“Courts will not follow the letter of [the law] when it leads away from the true intent and purpose of the legislature, and to conclusions inconsistent with the general purpose of the [statute]. A too literal [interpretation] of a statute, which would prevent the enforcement of it according to its true intent, should be avoided.”).

though using an Oklahoma site is the only basis under which SWEPCO claims PURA § 14.101 does not apply.⁵¹²

Staff argues that PURA § 14.101 applies because SWEPCO is acquiring the SWFs to operate as a part of a system that produces electricity for customers in Texas and substantially affects customers in Texas. Although the SWFs are not physically in Texas, Staff argues that the statute covers more than just physical presence in the state through the use of the language “system in the state” as used in § 14.101. Staff submits that this language would cover facilities that operated as a part of a system that directly affected customers in the state and not just facilities actually located in the state. “There are transmission lines, distribution lines and substations, many of which will be located in Texas, that will be a part of the system that provides electricity to Texas customers generated at the SWFs. All of this constitutes a part of the transmission system.”⁵¹³

SWEPCO focuses on the words “in this state” in § 14.101(a)(1), arguing that, because the SWFs are not located in Texas, that section cannot apply to this transaction.⁵¹⁴ The Company notes that the Commission’s rule implementing § 14.101 is even more specific. 16 TAC § 25.74(b) states: “Pursuant to PURA §14.101(a)(1), an electric utility shall not sell, acquire, or lease a plant as an operating unit or system in the State of Texas for a total consideration of more than \$10 million unless the electric utility reports such transaction to the commission at least one commission working day before the transaction closes.” The Company adds, however, that it has nevertheless complied with the applicable reporting requirements, and concludes that it has established that the acquisition of the SWFs is in the public interest because it is expected to lower costs for customers.

SWEPCO responds to the opposing parties’ arguments by noting, first, that the *SPS Hale and Sagamore* final order did not rely on § 14.101 as a basis for jurisdiction, nor did it include a

⁵¹² Golden Spread Reply Brief at 5-6, citing SWEPCO Ex. 9 (Pfeifenberger Dir.) at 9-10 and Tr. at 517-18 (Pfeifenberger).

⁵¹³ Staff Reply Brief at 15-16.

⁵¹⁴ SWEPCO Ex. 2 (Brice Dir.) at 27.

public interest determination under that provision.⁵¹⁵ Second, the Commission explicitly did not reach the contested issue of whether § 14.101 applied to the acquisition in *Wind Catcher*.⁵¹⁶ And third, the two other cases cited by the opposing parties—*ETI Union Station* and *SPS XEST*—were both withdrawn by the applicants before proceeding to hearing. As a result, there is no final order in either case that concludes that § 14.101 does or does not apply to out-of-state facilities.

Based on the parties' arguments, the ALJs first note that any substantive recommendation on this issue would be dicta if the Commission adopts the ALJs' recommendation to reject the Application. In *Wind Catcher*, the Commission deleted the ALJs' FoFs and CoLs that found (or concluded) that § 14.101 does not apply to a CCN application for authorization to acquire out-of-state facilities. That was in a situation in which the ALJs recommended approval of the *Wind Catcher* acquisition but the Commission denied the application. Similarly, in this case, if the Commission denies the Application, the Commission need not reach the issue of whether § 14.101 applies.

Nevertheless, because § 14.101 was raised as an issue to be addressed in this case and was briefed extensively, the ALJs reach that issue. The ALJs conclude that the current precedent is that § 14.101 does not apply to a CCN application that involves acquisition of out-of-state facilities. This recommendation is not based on the ALJs' conclusion in *Wind Catcher*. It is instead based on the Commission's final order in *SPS Hale and Sagamore*, which states:

After considering the proposed factors set forth in PURA § 37.056(c), the Commission concludes that SPS has shown a probable lowering of costs to customers in the area, and SPS's application should be granted. To ensure an economic benefit to customers, the Commission further concludes that SPS must comply with all the provisions of the settlement agreement and this Order⁵¹⁷

⁵¹⁵ *SPS Hale and Sagamore*, Final Order (May 25, 2018).

⁵¹⁶ *Wind Catcher*, Order at 9. SWEPCO notes that the PFD in that case determined that § 14.101 did not apply to those Oklahoma facilities. *Wind Catcher*, PFD at 77 (May 21, 2018) ("The ALJs agree with SWEPCO and OPUC that PURA § 14.101 does not apply.").

⁵¹⁷ *SPS Hale and Sagamore*, Order at 4-5.

The Preliminary Order in *SPS Hale and Sagamore* listed § 14.101 as an issue to be addressed.⁵¹⁸ Notably, however, the foregoing language in the final order does not refer to § 14.101, and that section is not listed in the text or any FoF or CoL in the final order. The precedent is somewhat murky because the Commission’s final order in *SPS Hale and Sagamore* approved a unanimous settlement, rather than resulting from a full hearing and briefing on contested issues. The settlement states, among other things, that it is non-precedential based on the specific facts of the case, and that it does not establish any ratemaking principles that can be used in other proceedings.⁵¹⁹ The ALJs conclude that the § 14.101 issue is not a “ratemaking” issue and is instead a jurisdictional issue. In *SPS Hale and Sagamore*, the facilities were located in both Texas (Hale) and New Mexico (Sagamore). Despite the facilities being located in *both* Texas and New Mexico, the Commission relied solely on § 37.056(c) in approving the transaction. While the parties may have intended to reserve the § 14.101 question, the settlement itself does not refer to that section. “The Signatories agree that a generation CCN should be issued in accordance with PURA §§ 37.056 and 37.058 for the Hale and Sagamore projects. The Signatories agree that the Commission should find that SPS’s decision to enter into the Hale Transaction was reasonable.”⁵²⁰

The ALJs place no reliance on *ETI Union Station* or *SPS XEST* because the Commission did not issue a final order in either case. While the preliminary orders in those cases directly or indirectly conclude that § 14.101 could (or did) apply to those applications, those preliminary conclusions were never made final.

The ALJs also are not persuaded by Golden Spread’s argument that a Commission order that fails to address § 14.101 factors could be deemed arbitrary and capricious. The parties that focus on the words “[acquire an] *operating unit or system* in this state” apparently interpret that phrase to mean “acquire an operating unit or system *that affects* operations in this state.” The

⁵¹⁸ *SPS Hale and Sagamore*, Preliminary Order at 4 (Item 2) (May 19, 2017).

⁵¹⁹ *SPS Hale and Sagamore*, Unanimous Settlement Agreement at 4 (Feb. 27, 2018).

⁵²⁰ *SPS Hale and Sagamore*, Unanimous Settlement Agreement at 5 (Feb. 27, 2018).

ALJs do not recommend reading those extra words into the statute. A plain reading of the phrase is that § 14.101 is written to apply to a utility that proposes to acquire an operating unit or system facilities in this state for more than \$10 million. The ALJs conclude that the words “in this state” (or “in the State of Texas” as used in 25 TAC § 25.74(b)) mean that § 14.101 does not apply to a CCN to acquire facilities located in another state.

XII. FINDINGS OF FACT

Background and Procedural History

1. Southwestern Electric Power Company (SWEPCO) is a wholly owned subsidiary of American Electric Power Company (AEP) and is a fully integrated electric utility serving retail and wholesale customers in Texas, Arkansas, and Louisiana.
2. SWEPCO provides electric generation, transmission, and distribution services in Texas under certificate of convenience and necessity (CCN) number 30151.
3. On July 15, 2019, SWEPCO filed an application with the Public Utility Commission of Texas (Commission) for a CCN to acquire an interest in three wind generation facilities (SWFs or the Project) located in Oklahoma (Application).
4. Through a request for proposal process, SWEPCO and its sister company, Public Service Company of Oklahoma (PSO), contracted to acquire project companies owning the following wind facilities: (1) Traverse at 999 megawatts (MW); (2) Maverick at 287 MW; and (3) Sundance at 199 MW, subject to receipt of regulatory approvals and satisfaction of other conditions. Each of the SWFs is owned by an affiliate of Invenergy LLC. SWEPCO contracted to acquire 54.5% of each facility, for a total of 810 MW. The total price for the SWFs, including all interconnection and upgrade costs, is \$1.86 billion. Total Project costs, including purchase and sale agreement price adjustments and owner’s costs, are expected to be \$1.996 billion, and SWEPCO’s 54.5% share is \$1.088 billion.
5. The Commission referred the Application to the State Office of Administrative Hearings (SOAH) on August 22, 2019.
6. SWEPCO provided notice of the Application by publication once a week for two consecutive weeks in newspapers having general circulation in each county in SWEPCO’s service territory. SWEPCO’s notice by newspaper publication was completed on September 5, 2019.
7. SWEPCO’s individual notice to its Texas retail customers by bill insert was completed on September 17, 2019.

8. SWEPCO provided individual notice to Commission staff (Staff) and the Office of Public Utility Counsel (OPUC) by hand delivering a copy of SWEPCO's filing to each party's counsel. Individual notice was also provided to the legal representative of all parties in Docket No. 46449, SWEPCO's most recent base rate case, and Docket No. 47461, SWEPCO's CCN application for the Wind Catcher project (*Wind Catcher*), by providing each party with a copy of SWEPCO's filing either by hand delivery, courier, or U.S. First Class mail. This individual notice was completed on July 15, 2020.
9. The following parties intervened and participated in this docket: Texas Industrial Energy Consumers (TIEC); OPUC; Golden Spread Electric Cooperative (GSEC); East Texas Electric Cooperative, Inc. and Northeast Texas Electric Cooperative, Inc. (together, ETEC-NTEC); Cities Advocating Reasonable Deregulation (CARD); and Walmart Inc. Staff also participated in this docket. The International Brotherhood of Electrical Workers Local Union 738 intervened in this docket but did not participate.
10. On September 12, 2019, the Commission issued its Preliminary Order identifying the issues to be addressed in this proceeding.
11. On September 28, 2019, in SOAH Order No. 2, the SOAH Administrative Law Judges (ALJs) established a procedural schedule and set the time, date, and place for the hearing on the merits.
12. The hearing on the merits commenced on February 24, 2020, and concluded on February 26, 2020.
13. The parties submitted initial post-hearing briefs on March 9, 2020, and reply briefs on March 17, 2020.
14. On March 11, 2020, SWEPCO filed proposed findings of fact (FoFs) and conclusions of law (CoLs).
15. On March 17, 2020, the intervenors and Staff individually responded to SWEPCO's proposed FoFs and CoLs.
16. The record closed on March 25, 2020, when Staff and TIEC filed their joint proposed FoFs and CoLs.

Certificate of Convenience and Necessity Standard of Review

17. The investment in the Project will have a significant impact on SWEPCO's finances.
18. The Project will not cause adverse effects to other electric utilities serving the proximate area in Texas.

19. Because the Project will be located entirely within the state of Oklahoma, there will be no adverse effect on community values, recreational and park areas, historical and aesthetic values, or environmental integrity in Texas.
20. Because there is no need for the Project to serve retail load, the addition of the Project will not improve service.
21. Texas has already met its renewable energy goals, so the Project will have no effect on those goals.
22. SWEPCO is not currently in the process of implementing customer choice in its service territory.

RFP Selection Process

23. SWEPCO uses an integrated resource plan (IRP) to identify resources to serve customers, over a 20-year planning period.
24. SWEPCO's 2018 and 2019 IRPs identified wind resources as economical and recommended that they should be added beginning in 2022 to take advantage of the federal Production Tax Credits (PTCs).
25. SWEPCO resolved to acquire additional wind resources through a competitive request for proposals (RFP) process.
26. On January 7, 2019, the Company issued an RFP for up to 1,200 MW of wind generation resources. The Company sought projects on a turnkey basis in which it individually, or together with its AEP affiliate utility operating company PSO, would acquire through a purchase service agreement (PSA) all of the equity interests in the project company whose assets consist solely of the selected project.
27. The Company sought projects that: (1) are physically located in, and interconnected to, the Southwest Power Pool (SPP) in Arkansas, Louisiana, Texas, or Oklahoma; (2) are not currently experiencing, or anticipated to experience, significant congestion or deliverability constraints; and (3) balance project performance and deliverability to the AEP West load zone in the Tulsa area.
28. In addition, the Company sought projects that are either in service or that would be placed in service by December 15, 2021, and thus qualify for at least 80% of the PTC value.
29. On March 1, 2019, SWEPCO and PSO received 35 bids representing 19 unique wind projects totaling 5,896 MW. Fifteen projects were located in Oklahoma and four in Texas.

30. The top three ranked bids (Traverse, Maverick and Sundance) became the SWFs.
31. Each developer was required to submit an independent assessment of the wind resource and expected energy output. The independent analyses were required to include one-year, five-year, 10-year, 20-year and 30-year production forecast estimates for the various probability of exceedance values (P50, P75, P90, P95, and P99).
32. SWEPCO and PSO hired Simon Wind Inc., to (1) independently review wind resource assessments and the expected energy output included in each of the RFP proposals; and (2) develop a wind energy resource assessment for each of the SWFs.
33. SWEPCO selected the SWFs through its RFP Process.

Project Description

34. The SWFs will be located in north central Oklahoma and will total 1,485 MW of installed nameplate capacity, as follows:

	Traverse	Maverick	Sundance
Size (Nameplate)	999 MW	287 MW	199 MW
SWEPCO Share	544.5 MW	156 MW	108.5 MW
Planned Commercial Operation Date	2021	2021	2020

35. SWEPCO seeks approval to acquire 54.5% of the SWFs, with PSO to own the remaining 45.5%.
36. The winning bidders will build the projects, which SWEPCO and PSO will then purchase on a turnkey basis.
37. The estimated total installed capital cost for the SWFs is approximately \$1.996 billion (of which SWEPCO's share is approximately \$1.09 billion). This cost includes (1) each wind project's purchase price under the respective PSAs, (2) PSA price adjustments, (3) owner's costs, (4) all costs associated with interconnecting the facilities to the SPP transmission system, and (5) any assigned network upgrade costs.

Economic Modeling and Assumptions

38. SWEPCO modeled the customer savings of the SWFs, using a base case (with and without a carbon emission burden) along with sensitivities based on higher and lower gas and power price forecasts, a lower level of energy production for the SWFs, and cases based on higher than expected congestion costs that resulted in construction of a generation tie line (gen-tie).

39. Based on the Company's assumptions, SWEPCO projected customer savings under all cases modeled.
40. SWEPCO's assumptions do not reflect a realistic range of possible future conditions.
41. SWEPCO has not demonstrated that, under a reasonable range of assumptions, SWEPCO's acquisition of the SWFs will provide benefits to customers.

Natural Gas Prices

42. Future natural gas prices are an essential element of the Project's benefits calculation. The higher the expected future natural gas prices, the greater the expected benefits from the Project.
43. Natural gas prices are important because fuel prices are a key component in determining the supply stack, or merit order, for the dispatch of generating units.
44. SWEPCO used AEP's Long-Term North American Energy Market Forecast (Fundamentals Forecast) to forecast the expected Project benefits.
45. The current version of the Fundamentals Forecast was created in April 2019.
46. The Fundamentals Forecast contained natural-gas-price projections for a base case, a high case, a low case, and a version of each of those cases that did not include an assumed carbon burden. The base case was the primary case used by SWEPCO to analyze the economics of the Project. The base case used a levelized natural gas price of \$5.40 per million British thermal units (MMBtu). SWEPCO's lowest price natural gas case (the low, no carbon case) used a levelized price of \$4.50 per MMBtu.
47. Each of SWEPCO's past forecasts, dating back to 2007, has been on the high side of actual natural gas prices.
48. Although the Fundamentals Forecast was weather-normalized, the evidence did not quantify the impact of abnormal weather on prior forecasts.
49. SWEPCO's forecasts start out higher than current prices and have been higher than actual prices for several years.
50. The New York Mercantile Exchange (NYMEX) futures prices represent actual transactions between buyers and sellers who put real money at risk in their day-to-day operations.
51. A gas price forecast created using the methodology used by Southwestern Public Service (SPS) in recent Commission proceedings was significantly lower than SWEPCO's

fundamental forecast. The SPS low-method forecast projected a simple average price of natural gas of \$3.34 per MMBtu.

52. The lowest Energy Information Administration (EIA) case has been the most accurate in recent years.
53. The levelized natural gas price for the 2020 version of EIA's lowest case for the years 2021 to 2051 is approximately \$3.46 per MMBtu.
54. A decrease of \$1 per MMBtu in gas prices would reduce the estimated savings for the Project by \$246 million net present value from the no-carbon P50 case.
55. SWEPCO calculated a breakeven natural gas price for the SWFs (based on SWEPCO's low/no carbon modeling assumptions) that is \$3.67 per MMBtu levelized.
56. The 2020 version of EIA's lowest case shows natural gas prices that are below SWEPCO's own calculation of a breakeven point for the SWFs.
57. The record in this proceeding fails to show that the assumptions made by SWEPCO regarding gas prices will result in a probable lowering of cost to consumers.
58. The natural gas forecasts and futures prices in the record in this proceeding show that the SWFs are unlikely to result in a probable lower of cost to consumers.

Cost of Carbon

59. SWEPCO evaluated the expected customer benefits of the acquisition of the SWFs both with and without a future enforced carbon emission burden (carbon tax or carbon burden).
60. In all of SWEPCO's cases that include a carbon burden, the burden is \$15 per ton commencing in 2028 and then escalating by 3.5% per annum.
61. SWEPCO assumed that a carbon tax would increase the customer benefits of the Project by \$171 million NPV for SWEPCO's base case.
62. Although it is possible that a carbon emission tax will be imposed in the future, such a tax has not been imposed in the past, there is not one in place now, and it is not reasonable to assume that tax will be imposed in the future for purposes of assessing the probable lowering of costs to customers.
63. Including a carbon-burden assumption in the modeling causes the SWFs to appear more economical than they otherwise would.

64. SWEPCO's modeling of the locational marginal prices should not have included the carbon-burden component, and the calculation of the estimated benefits of the Project should not include that component.

Renewable Resources

65. SWEPCO modeled locational marginal prices in the SPP by relying on the 2024 and 2029 PROMOD models developed by SPP and stakeholders in the Integrated Transmission Planning (ITP) process using the Future 1 case. The ITP Future 2 case assumes a higher level of renewable resources and more accurately represents the expected level of future renewable penetration in the SPP.
66. SWEPCO's modeling understated the amount of new renewable generation in SPP.
67. The SPP interconnection queue includes an additional 10,000 MW of projects with pending or completed interconnection agreements, 11,000 MW of additional renewable projects in the SPP Facility Study Stage, and another 70,000 MW in the Definitive Interconnection System Impact Study stage.
68. Additional wind generation would primarily affect power prices during the hours in which wind generation runs, which will also be the same hours during which the SWFs will run.

Capacity Factor

69. A crucial measure of generation output is the SWFs' net capacity factor, which is the ratio of the actual output of a generating unit over a period of time to its potential output at full nameplate capacity.
70. The P50 expected production level of 44.01% was developed by SWEPCO's wind consultant and excluded consideration of force majeure, mechanical defects, and curtailment. The actual median of expected energy production for the SWFs is lower than the P50 level.
71. SWEPCO guaranteed production at the P95 level, which the SWFs are nearly certain to achieve; therefore it is reasonable to evaluate the economic benefits of the SWFs at the P95 level of energy production.
72. The risk that production could fall below P95 due to force majeure or curtailment is real.
73. A 1% reduction in the NCF for SWEPCO's low/no carbon case results in a \$32.8 million NPV reduction in net benefits.
74. It is not reasonable to evaluate the economics of the SWFs at a production level SWEPCO is not willing to guarantee.

75. Evaluating the SWFs using the P95 level of energy production is a reasonable stress-test of the economics of the Project.

Useful Life

76. SWEPCO has not shown that the SWFs will have an extended useful life of 30 years.
77. The warranty provided by the turbine manufacturer does not support a 30-year useful life.
78. Extending the useful life beyond 25 years depends on operation and maintenance (O&M) and capital costs that may outweigh the benefit.
79. SWEPCO's O&M and capital forecast is unreasonable because it does not recognize the higher level of capital and O&M expense that will be required to extend the useful lives of the SWFs to 30 years.
80. A significant amount of SWEPCO's projected net benefits is expected to occur during years 26-30.
81. The SWFs should be evaluated using a 25-year design or useful life.

Congestion Costs and Gen-tie

82. SWEPCO understated congestion and loss-related costs associated with the delivery of power to the AEP West load zone from the SWFs.
83. There are limitations to the PROMOD model that cause it to understate projected congestion costs.
84. In *Wind Catcher*, SWEPCO witness Johannes P. Pfeifenberger included a 5% curtailment adjustment to account for PROMOD's underestimation of congestion costs. Applying that 5% curtailment calculation to the Wind Facilities would result in a \$72 million NPV reduction in net benefits.
85. SWEPCO modeled base cases assuming high congestion wherein savings drop from \$567 million to \$95 million at a P95 capacity factor without carbon burden. SWEPCO did not model low gas cases assuming high congestion.
86. Holding congestion costs flat in nominal terms while simultaneously forecasting ever-increasing power prices is an unreasonable assumption. Escalating congestion costs at the level of forward prices for power at the SPP South Hub results in a \$49 million NPV reduction in net benefits.

87. Additional future wind generation creates a significant risk of higher congestion costs.
88. It is not reasonable to hold congestion costs flat in nominal terms based on speculation that SPP would promote additional transmission solutions in the future.
89. It is inconsistent to hold congestion costs flat in nominal terms based on the availability of a gen-tie solution without including the cost of the gen-tie solution in the same model.
90. Although SWEPCO is not proposing in this case to construct a gen-tie, the economic analysis should include a gen-tie to evaluate the risks of higher levels of congestion.
91. SWEPCO assumed that the initial capital cost of a gen-tie would be \$433 million in 2021 dollars. SWEPCO's estimate is not based on any specific route or project timeline.
92. SWEPCO's assumption that a gen-tie built solely to deliver energy from the SWFs to AEP's load would have a 60-year useful life is unreasonable. The gen-tie should be evaluated based on the same useful life as the SWFs.
93. SWEPCO did not demonstrate that the SWFs would benefit customers if the Company builds a gen-tie to mitigate congestion cost increases on the SPP transmission system that are not addressed by the SPP ITP process.

Capacity Value

94. SWEPCO calculated capacity value for the SWFs based on capacity addition deferrals starting in 2037.
95. When a generation resource is acquired solely on the basis of the probable lowering of costs to customers, it is not reasonable to include the capacity value in the benefit analysis.
96. SWEPCO did not demonstrate that the SWFs will also provide value by deferring the Company's future capacity needs.

Production Tax Credits and Deferred Tax Asset

97. The Company's economic analysis of the Project considered both the amount of Production Tax Credits (PTCs) the SWFs were expected to produce, as well as the carrying charges on the unutilized PTCs that would be treated as deferred tax assets (DTA) for ratemaking purposes.
98. Aside from the eligibility qualification for the PTCs, the amount of the PTCs is dependent on the output of the SWFs over their useful life.

99. The energy output expected from the SWFs is based on a wind resource assessment that explicitly excludes consideration of force majeure, mechanical defects, and curtailment.
100. For purposes of the economic evaluation, the PTCs should be calculated using the P95 level of output.
101. The treatment of any DTA should be addressed in a rate proceeding.

Revenue Requirement

102. SWEPCO's forecast of the revenue requirement associated with the SWFs assumes flat ongoing capital and O&M costs, despite statements from the wind turbine manufacturer that O&M costs are expected to be higher in later years.

SWEPCO's Proposed Conditions

103. SWEPCO proposed a capital cost cap equal to 100% of its share of the aggregate filed capital costs for the Project totaling \$1.09 billion. This guarantee is not subject to exceptions.
104. SWEPCO's capital cost cap includes underestimated O&M expenses that will be needed for continued operation of the SWFs over their expected 30-year life, and it does not include construction costs for a potential gen-tie.
105. SWEPCO proposed that, if PTCs are not received at the 100% level for Sundance and at the 80% level for Traverse and Maverick, because one or more of the SWFs is determined to be ineligible under current law, SWEPCO will guarantee to make its customers whole for the value of the lost PTCs based upon actual production.
106. SWEPCO's PTC eligibility guarantee is subject to an exception for future legislative changes that would make one or more of the SWFs ineligible for PTCs.
107. SWEPCO proposed that, beginning in 2022, it will guarantee a minimum production level, in aggregate from the SWFs, of an average of 87% of the expected output of the SWFs (which represents a 38.1% capacity factor and 4,959 GWh per year) for ten years, as averaged over five-year blocks.
108. SWEPCO's minimum production guarantee is subject to exceptions for force majeure events and economic and environmentally-based SPP curtailments.
109. SWEPCO and PSO previously entered into comprehensive settlement agreements associated with the acquisition of the SWFs as filed with the Arkansas Public Service Commission (APSC) and Oklahoma Corporation Commission (OCC), respectively, that

contain more enhanced financial safeguards for customers than the guarantees SWEPCO proposed in this case.

110. SWEPCO declined to modify the cost-saving guarantees it proposed in this case to become consistent with any of the guarantees contained within the settlements associated with the acquisition of the SWFs that SWEPCO and PSO previously entered into and which were filed with the APSC and OCC, respectively.
111. SWEPCO did not establish that the acquisition of the SWFs will result in the probable lowering of costs to customers with or without its proposed guarantees.
112. SWEPCO's proposed guarantees are insufficient to protect consumers from the financial risks of the Project.

Regulatory Approvals in Other Jurisdictions

113. SWEPCO filed for approval of the acquisition of the SWFs with APSC in Docket No. 19-035-U on July 15, 2019.
114. A unanimous settlement of Docket No. 19-035-U was filed on January 24, 2020, which includes the option for the Company to acquire a larger share of the SWFs for Arkansas customers if another SWEPCO jurisdiction should deny its respective share.
115. SWEPCO filed for approval of the acquisition of the SWFs in Louisiana before the Louisiana Public Service Commission (LPSC) in Docket No. U-35324 on July 15, 2019.
116. An uncontested settlement of Docket No. U-35324 was filed in April 9, 2020, which includes what the Company refers to as a "Flex Up" option.
117. SWEPCO expects orders from the APSC and LPSC in May 2020 addressing the settlements filed in those jurisdictions.
118. PSO filed for approval related to the acquisition of the Selected Wind Facilities in Oklahoma before the OCC in Cause No. PUD 201900048 on July 15, 2019.
119. A Joint Stipulation and Settlement Agreement was approved by the OCC in Cause No. PUD 201900048 on February 20, 2020, authorizing PSO's ownership of 675MW of the Selected Wind Facilities.
120. SWEPCO and PSO filed for approvals related to the acquisition of the Selected Wind Facilities before the Federal Energy Regulatory Commission (FERC) in FERC Docket No. EC20-17-000 on November 15, 2019.

121. FERC approved the application in Docket No. EC20-17-000 on February 21, 2020, for the acquisition of the SWFs by SWEPCO and PSO.

Rate Issues

122. SWEPCO's Application addressed a number of rate issues that might apply if the Application were approved, including recovery of PTCs.

XIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Public Utility Regulatory Act, Texas Utilities Code §§ 14.001, 36.203, 36.204, 37.051, 37.053, 37.056, and 37.057 (PURA).
2. SOAH has jurisdiction over this proceeding, including the preparation of this proposal for decision with findings of fact and conclusions of law, pursuant to PURA § 14.053 and Texas Government Code § 2003.049.
3. Notice of the Application was provided in compliance with PURA § 37.054 and 16 Texas Administrative Code § 22.55.
4. SWEPCO is not implementing customer choice under PURA §§ 39.501(b) and 39.502(b) and 16 TAC § 25.422(e).
5. SWEPCO has not shown that the Project will result in the probable lowering of costs to retail customers pursuant to PURA § 37.056(c)(4)(e).
6. Texas has met its renewable energy goals under PURA § 39.904(a).
7. SWEPCO did not meet its burden of proof to show that the Project is necessary for the service, accommodation, convenience, or safety of the public under PURA § 37.056.
8. SWEPCO is not entitled to approval of the Application.


XIV. PROPOSED ORDERING PARAGRAPHS

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:


1. The Commission denies the Application, as outlined in this Order.

2. All other motions and any other requests for general or specific relief, if not expressly granted here, are denied.

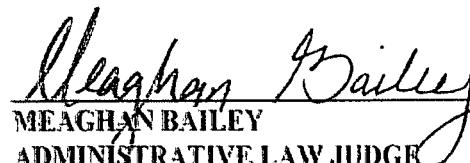
SIGNED May 26, 2020.



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AGENCY: **Public Utility Commission of Texas (PUC)**

STYLE/CASE: **APPLICATION OF SOUTHWESTERN ELECTRIC POWER
COMPANY FOR CERTIFICATE OF CONVENIENCE AND
NECESSITY AUTHORIZATION AND RELATED RELIEF FOR
THE ACQUISITION OF WIND GENERATION FACILITIES**

SOAH DOCKET NUMBER: **473-19-6862**

REFERRING AGENCY CASE: **49737**

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE

ALJ STEVEN NEINAST

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